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EXAMINER

HARBECK, TIMOTHY M

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/820,574	<b>Applicant(s)</b> MALTZMAN, REED	
	<b>Examiner</b> Timothy M. Harbeck	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20, 22 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (US Pat. No. 6,202,051 B1) in view of Hof et al (Hof hereinafter, eBay vs. Amazon.com, May 31, 1999, Business Week, pg 128).

**Re Claim 1:** Woolston discloses a method for facilitating Internet commerce through internetworked auctions comprising presenting, via a first computer system (Column 5, lines 1-4) an auction purchase process of an offering to a buyer (Column 5 line 53- Column 7 line 5). Woolston does not disclose a method for presenting a fixed price purchase process or the method where the fixed price purchase process presentation is removed in response to a bid from a buyer in the auction purchase process. Hof discloses that eBay, a popular Internet auction server at the time of invention, had considered adding fixed prices to their auctions. It would have been obvious to someone skilled in the ordinary art at the time of invention to include the fixed price purchase process of Hof to the auction purchase process of Woolston, so that the risk for both the sellers and buyers in the auction process can be limited. The risk of a seller placing an item up for auction is that he or she will not receive a fair value for the product if only one bid is received. The risk of a buyer is that another bidder may

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drive up the price of said product above the fair value. The fixed price purchase option would help alleviate this risk by allowing the buyer and seller to agree on a reasonable price before the auction truly commences (introduction of additional bidders). The buyer and seller are therefore assured of a fair transaction, as opposed to the potential risks associated with the auction. It also would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a specified price is the optimal system so that the buyer has the option to minimize his risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item.

**Re Claim 2:** Woolston further discloses a method wherein the presenting includes generating a first user interface identifying the auction purchase to the buyer (Column 6, line 26-28). Woolston does not disclose generating an interface identifying the fixed price process to the buyer, however this would have been obvious in light of

the previous rejection to Claim 1 above so that the initial buyer could be presented with both options and can make a decision based upon the amount of risk he or she is willing to take on.

**Re Claim 3:** Woolston further discloses a method wherein the first user interface is a markup language document generated at a second computer system (Column 2, line 52-59), and wherein the presenting includes communicating the markup language document from the second computer system to the first computer system (Column 3, lines 18-27).

**Re Claim 4:** Woolston in view of Hof has established, in the rejection of claim 1 above, that the fixed price purchase option is only valid if a bid has not been placed on an item. Once a bid is place the option to buy said item at a fixed price is no longer available and therefore it would have been obvious to remove this option from the first user interface as discussed above in Claim 3 and to generate a second user interface that only identifies the auction purchase process to the buyer so that said buyer cannot purchase the item outright without going through the auction process with other potential users

**Re Claim 5:** Woolston in view of Hof discloses the claimed method except for wherein the auction purchase process is presented with an initial bid value and wherein the fixed price purchase option is presented with a pre auction seller determined price. However it would have been obvious to someone skilled in the ordinary art at the time of invention to include these values in the presentation of the user interface to provide potential buyers with pricing information. The initial bid value is the lowest possible

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price that a seller is willing to part with the item (commonly referred to as a reserve price; Column 4 lines 30-31), and therefore lets the potential buyers know that any lower bid is moot. The use of a reserve price is a common practice in auctions that has been used prior to the date of invention. The fixed price purchase method has been established with regards to Claim 1 above, and therefore it would have been obvious to present this price to the potential buyer so that he can purchase the item at the specified price before the auction commences. If this were not presented to the potential buyer, he or she would have no way to determine the fixed price. It is also obvious for the seller to determine this fixed price because they have the most intimate knowledge of the item since they currently own it and are therefore in the best position to establish a fair market value.

**Re Claim 6:** Woolston in view of Hof above has established the fixed price purchase option for the initial buyer/bidder. Woolston further discloses a method wherein an electronic transaction is established between a buyer and a seller (Column 5 lines 10-19).

**Re Claim 7:** Woolston in view of Hof discloses the claimed method supra and further discloses a method wherein, responsive to the receipt of the bid from the buyer, as part of the auction process, maintaining only the auction purchase process to receive further bids from further buyers (Column 6, lines 26-49). Woolston does not disclose that the auction lasts for a predetermined amount of time, however this has been common for online auctions such as eBay, Amazon and OnSale for years before the time of invention.

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**Re Claim 8:** Woolston in view of Hof discloses the claimed method supra and Woolston further discloses establishing the electronic transaction between a winning buyer who submitted a highest valid bid and the seller (Column 5, lines 10-19).

**Re Claim 9:** Woolston further discloses presenting to a seller a purchase process option to sell the offering by both the auction and the fixed price purchase process and receiving a purchase process indication from the seller responsive to the presentation of the purchase process option (Column 4, lines 25-30).

**Re Claim 10:** Woolston discloses a method wherein selling information from a seller is received including at least one of an offering description (Column 6, lines 11-14), and receiving purchasing information including a desired bid the buyer will buy the offering (Column 6, lines 27-32, lines 47-49).

Woolston further discloses a method comprising determining a successful buyer when if multiple buyers submit bidding information and the highest possible bids, the buyer with the highest bid is the successful buyer (Column 6, lines 32-34). Finally

Woolston does not disclose indicating whether to allow a buyer a chance to buy the offering at the seller determined price, and if the indication to allow the buyer the chance to buy the offering at the seller determined price, nor does he disclose receiving purchasing information from the buyer including an affirmative indication to purchase the offering at the seller determined price.

Woolston also does not disclose determining a successful buyer comprising at least one of an affirmative indication to purchase the offering at the pre auction seller

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determined price is received from the buyer and no bids have been accepted for the offering, the buyer, having given affirmative indication, is the successful buyer.

Hof, as noted in claim 1, discloses that eBay, a popular online auction service had considered fixed prices. Using the same rationale as in Claim 1, it would have been obvious to include the fixed prices taught by Hof to the auction system of Woolston. It follows then that the process for receiving an offering's seller information indicating whether to allow a buyer the chance to buy the offering at a seller determined price, along with the bid reserve price to give the initial buyer the opportunity to use the fixed price function. If there were no way to indicate to the buyer that this fixed price exists, there would be no way to exercise this option.

Next, in the same way that purchase information is received that includes a desired bid from the buyer, the system would be capable of receiving purchase information after an affirmative indication to purchase the offering at the seller determined price. The successful buyer could also be determined from this affirmative indication, because only the first bidder is eligible for this option (See Claim 1). If there is an affirmative response to the fixed price offer, the successful buyer is the party who responded to the offer.

**Re Claim 11:** Woolston in view of Hof discloses the claimed method supra, but does not disclose requesting additional information from the buyer used to determine whether to accept the bid. The bid in this case is the request to purchase the offering at the offerings seller determined price. This process of soliciting bidder information after the auction, however, has been used for years prior to the date of applicant's invention.

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This is done for a variety of reasons, including ensuring that the potential buyer has enough funds to support the transaction, the buyer has some form of collateral to put against the auctioned item, or to see if the buyer has defaulted on any previous transactions. In this way the seller and the auction enterprise can be protected from either fraudulent bids or from completing a transaction with a buyer who simply cannot afford the item.

**Re Claim 12:** Woolston in view of Hof discloses the claimed method supra. As stated previously with regards to Claim 1, it would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a specified price is the optimal system so that the buyer has the option to minimize his risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item.

**Re Claim 13:** Notifying the offering seller of an error if the reserve price is not equal to or less than the seller determined price would be inherent in this process. The reserve price is the lowest bid the seller is willing to accept for the item for sale. If the fixed purchase price were less than the reserve price there would be no reason an interested party would bid on the product because they would purchase the item outright at the lower price. The presence of a lower fixed purchase price would eliminate the auction option altogether.

**Re Claim 14:** This again would be inherent. A bid in an auction is essentially a promise to purchase the item at the offered price. It would be obvious then that this same bidder would purchase the item at a lower price. The benefit to the seller in notifying the buyer of the fixed purchase price is that he or she could quickly execute the transaction without having to go through the auction process, while receiving a price that he or she had previously established as acceptable.

**Re Claim 15:** If a first bidder places a bid that is less than the fixed purchase price, it would be obvious to notify the bidder of his option to purchase the item outright. The bidder may not be aware that the item has the fixed price option and may be willing to pay more to ensure that he wins the item without having to take on the risk associated with the bidding process. Since the option is only available to the first bidder, it is necessary to double check with the bidder before making the fixed purchase price void for the item. The seller would benefit in that he or she would receive the fair price that he or she had previously established as acceptable.

**Re Claim 16:** Woolston further discloses presenting a part of the offering's selling information to a buyer on a computer screen (Column 6, lines 26-39)

**Re Claim 30:** Further tangible machine-readable would have been obvious in order to perform the method of previously rejected method claim 1 and is therefore rejected using the same art and rationale.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Hof as applied to claim 16 and 23 above, and further in view of eBay ([http://web.archive.org/web/\\*/http://www.ebay.com](http://web.archive.org/web/*/http://www.ebay.com), Date: 11/27/99, Category: Toys, Bean Bag Plush: Action Figures: General)

**Re Claim 17:** Woolston in view of Hof discloses the claimed method supra except for the explicit disclosure of displaying a visual indicator in association with the offerings selling information. However the use of visual indicators has been used by online auction servers such as eBay prior to the date of applicant's invention. The examiner has provided a screen shot of an eBay auction from 1999 that uses visual icons and colors to indicate things such as a picture of the item or whether the item is a new listing. It would have been obvious to someone skilled in the ordinary art at the time of invention to include the visual indicators used by eBay to the auction process of Woolston in view of Hof, so that potential buyer can easily see if the option to purchase the item using the fixed price option is available. Without this visual indicator, said

potential buyer may place a bid, thus voiding the fixed purchase price option, when he may have wanted to exercise said fixed purchase price option.

**Re Claim 18:** Woolston in view of Hof and further in view of the Wayback Machine discloses the claimed method supra but does not disclose removing the visual indicator after a first bid is accepted for that offering from a first buyer. However this would be obvious since it has been established in previous claims that once a bid has been placed on an item, the ability to exercise the fixed purchase price is eliminated. The presence of the visual indicator is so that the first buyer knows that the option to purchase the item outright is still available. If the first buyer places a bid, the fixed price option is no longer available, and therefore the indicator should be removed for future bidders.

**Re Claim 19:** Woolston further discloses generating a user interface to receive the buyer's indication to purchase the offering (Column 6, lines 31-38). Woolston notes that participants can respond to the auction by placing higher bids than currently listed. In order to do this the bidders at the consignment nodes disclosed by Woolston must have some interfaced medium through which they can place their bid and communicate the bid to the auction host and other bidders. This process could easily be applied to the fixed purchase price option, in that if that option were selected by the first buyer a similar interface would appear and the buyer could input appropriate information.

Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al (Hess hereinafter, US Patent No 6,058,417) in view of Hof.

**Re Claim 20:** Hess discloses a method for information presentation and management in an online trading environment, comprising; receiving offering information from a plurality of sellers at a computer based transaction facility (Column 1, lines 23-29); organizing the offering information into predetermined categories (Column 7, lines 20-24); receiving a category selection from a buyer at the computer based transaction facility (Column 2, lines 15-27); and automatically displaying a list of offering information in the selected category, with a visual indicator appearing in association with a respective offering (Fig 9A).

Hess does not explicitly disclose that the visual indicators appear in association with a seller having given affirmative indication to allow a buyer a chance to buy the first offering at a pre auction seller determined price.

Hof discloses that eBay, a popular internet auction server at the time of invention and the assignee of the Hess invention, had considered adding fixed prices to their auctions prior to applicants invention. It would have been obvious to someone skilled in the ordinary art at the time of invention to include the fixed price purchase process of Hof to the method of Hess, so that the risk for both the sellers and buyers in the auction process can be limited. The risk of a seller placing an item up for auction is that he or she will not receive a fair value for the product if only one bid is received. The risk of a buyer is that another bidder may drive up the price of said product above the fair value. The fixed price purchase option would help alleviate this risk by allowing the buyer and seller to agree on a reasonable price before the auction truly commences (introduction

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of additional bidders). The buyer and seller are therefore assured of a fair transaction, as opposed to the potential risks associated with the auction.

It also would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a specified price is the optimal system so that the buyer has the option to minimize his risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item.

Furthermore it would have been obvious to someone skilled in the ordinary art at the time of invention to include a visual indicator, similar to the ones in Hess, in association with the seller's offer to allow a buyer a chance to buy the first offering at a pre-auction seller determined price. In this way the buyer would have a quick indicator as to whether the fixed price option is still available and will not place a bid on the item should he prefer to buy it outright before the auction at the seller determined price.

**Re Claim 22:** Hess in view of Hof discloses the claimed method, and further, it would have been obvious to remove the offerings selling information if a seller and a buyer have agreed a fixed purchase price. The motivation behind the fixed purchase price is to provide the first bidder with the opportunity to buy the item before the initiation of the auction. If the first bidder selects this option, it would be misleading to other potential bidders if the selling information were not removed. Other users of the system would not want to waste time viewing an item that is not on the market, when they could continue their search for similar items elsewhere.

### ***Response to Arguments***

Applicant's arguments filed 12/01/2005 have been fully considered but they are not persuasive. Examiner believes that the prima facie case of obviousness as established in the Office Action dated 6/27/2005 has met the criteria required for such an objection and furthermore can be maintained in light of the amendments.

Applicant has argued that the combination of Woolston in view of Hof does not disclose the claimed method nor does either reference provide motivation for combining the two. The examiner disagrees. Woolston shows both a fixed price market as well as an auction market available on a single interface as described in the rejection of Claim 1. Furthermore, the Hof reference as previously noted discloses that eBay, as early as May 1999 has contemplated "fixed-price auctions". Applicant has stated that there is no mention of both auctions and fixed pricing in Hof, however the phrase "fixed price auction" clearly demonstrates just that.

Applicant continues to argue that the references do not show the removal of the fixed-price purchase process and removing the presentation of the fixed-price purchase process in response to a bid from a buyer. However the examiner, in the rejection of claim 1, has provided evidence as to why this step would be obvious to anyone interested in implementing a fixed-price auction. With reference to Claim 1, examiner has stated "It would have been obvious to someone skilled in the ordinary art to remove the fixed price purchase process once a bid has been received so that the auction process can be maintained. An interested party may believe that he can purchase an item for less than the initial fixed price and place a bid. This is not to say that he would not pay the initial fixed price, but in the interest of searching for the best value may place a lower bid. If a second "bidding" party is allowed to simply come in purchase the item at the fixed price, the purpose of the auction process is defeated, and the result is a traditional e-commerce market. At the same time the removal of the fixed purchase price after an initial bid would be advantageous to the seller as well in that once additional parties begin to bid on the item, price competition will drive the cost higher. Allowing the first bidding party to an auction the right to purchase a product at a specified price is the optimal system so that the buyer has the option to minimize his risk, but at the same time the option to seek out a better value without completely losing out on the opportunity to purchase an item." Examiner that this step would have been obvious for the reasons stated and that the prima facie case regarding this combination was clearly established and can be further maintained.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

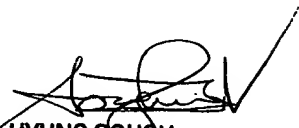
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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